IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 913 of 2000

in

SPECIAL CIVIL APPLICATION NO 8286 of 2000

WITH

CIVIL APPLICATION NO. 12041 OF 2000

with

SPECIAL CIVIL APPLICATION NO. 12475 OF 2000

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHAVDA JAGMALBHAI MALABHAI

Versus

STATE OF GUJARAT

Appearance:

MR YN OZA SR. COUNSEL for MR DC DAVE for Appellants
MR RR MARSHAL for the Petitioner
MR ND NANAVATI SR. COUNSEL for Respondent no. 3
MRS. MANISHA LAVKUMAR AGP for Respondent No. 1

MR HARIN P RAVAL for Respondent No. 2
MR SHIRISH JOSHI for Respondent No. 4

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE K.R.VYAS

Date of decision:09/07/2001

C.A.V. JUDGEMENT

(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

#. The order in this Appeal shall also decide the connected Public Interest Litigation, being Special Civil Application No. 12475 of 2000, in which similar relief has been claimed by the petitioners, as claimed by the appellants in the Appeal arising from Special Civil Application No. 8286 of 2000.

#. The Appeal has been preferred against the order of the learned Single Judge dated 11-12-2000, whereby the Petition filed by the appellants seeking quashing of the impugned Notification styled as Corrigendum dated 20-7-2000 (Exh. B to the Petition) to the Notification of the State Government dated 21-12-1994 (Exh. A to the Petition) has been dismissed.

#. The following facts would explain the grounds of challenge to the impugned Notification, described as Corrigendum (Exh. B to the Petition) dated 20-7-2000, issued by the Government of Gujarat in its Department of Urban Development and Urban Housing.

#. The Zalavad Ginning and Pressing Cooperative Society Limited (respondent no. 2 herein - hereinafter referred to as `the Society) is a registered cooperative society under the Gujarat Cooperative Societies Act, 1961. The Society was financially hard-pressed and was also indebted to Surendranagar District Cooperative Bank Limited (respondent no. 4 herein - hereinafter referred to as `the Bank') from which it had taken a loan for its business activities. The Society passed a Resolution dated 30-4-1987 to sell part of its lands to pay the debts of the Bank. The appellants nos. 2 and 3 were Members of the Managing committee of the Society, although, their that status was not disclosed by them in the Writ Petition.

#. Pursuant to the Resolution of the Managing Committee

of the Society, to sell part of its land, a public advertisement was issued in newspaper "Prabhat". Pursuant to the advertisement, only three offers were received and the highest offer of Chandrakant Kapurchandbhai Sanghvi (respondent no. 3 - hereinafter referred to as `the Purchaser') at the rate of Rs. 227.77 per sq. mt. was accepted. After acceptance of his highest offer at the above rate on 2-9-1988, the Society entered into an Agreement of Sale with the Purchaser. Apparently, since the Bank was also associated with the transaction of Agreement of Sale and it was agreed by the Purchaser to pay the purchase price directly to the Bank to pay off its debts, the Bank gave no objection, although, the properties of the Societies were part of the security of the Bank for due payment of the loan. The lands covered by the Sale Agreement bear Survey No. 1753/part, 1754/part, 1773, 1771/part and 1775/1 admeasuring 25,665 sq. mts. situate in village Wadhwan, District : Surendranagar.

#. The Society was engaged in the business of Ginning and Pressing and the properties possessed by it were admittedly in the industrial zone under the Town Planning of Surendranagar. After entering into Agreement of Sale with the Society on 2-9-1998, the Society and the Purchaser jointly made efforts by approaching the State Government for converting the land under Sale Agreement from industrial zone to residential zone, because on such conversion, the land was likely to fetch higher price. It is not in dispute that the Purchaser made efforts for the purpose of getting the land converted from industrial to residential zone in the Town Planning under the provisions of the Gujarat Town Planning and Urban Development Act, 1979 (hereinafter referred to as `the Town Planning Act'). It is also not in dispute that the Society supported the move of the Purchaser and is supporting the stand of the Purchaser to abide by the terms of the Agreement of Sale, in the Petition and in this Appeal. It appears that on the efforts and persuasion of the Society and the Purchaser, the State of Gujarat in its Urban Development and Urban Housing Department issued a Notification on 21-9-1994 in purported exercise of powers under subsection (1) of Section 19 of the Town Planning Act. What is to be noticed is that by Notification dated 21-12-1994 (Exh. A) of the Writ Petition), the Government of Gujarat granted sanction for the variation of the Development Plan for converting only the land under the Agreement of sale from industrial zone to residential zone, but subject to the following condition incorporated in the said Notification:-

"This variation shall take effect subject to the condition that disposal of the aforesaid lands shall be done by the Official Liquidator, Zalawad Ginning and Pressing Sahakari Mandali through the Collector, Surendranagar by public auction."

#. In order to give the background for the above condition attached to the variation of the Development Plan to permit disposal of the land under Agreement of Sale only by public auction through Official Liquidator, it is necessary to state some more facts about the role of Official Liquidator and the Collector, Surendranagar, who came to be involved in the matter of disposal of the land. The Bank for recovery of its outstanding loans filed a Lavad Case No. 415 of 1988 before the Board of Nominees, Rajkot on 7-9-1988. Admittedly, by that time, the dues of the Bank were in the sum of Rs. 27,27,714/-. In the Agreement of Sale reached between the Society and the Purchaser, it was agreed that the Purchaser would straight away pay the sale proceeds to the Bank towards its dues. Such an Agreement was reached between the parties in the Lavad Suit before the Board of Nominee. On the basis of such a conjoint arrangement between the Society, the Purchaser and the Bank, a consent decree was drawn on 31-7-1989 by the Board of Nominee. The Bank filed a Civil Application in the main Petition and got itself impleaded as party to the Petition. In its reply affidavit it states that under the consent decree, nothing was paid to the Bank, and as on 31-3-2001, the total dues of the Bank i.e. the principal money with interest have risen to Rs. 2,40,70,561/-. This balance is worked out after giving credit to the Society of payments made in different sums in execution proceedings, in the Court of Civil Judge (S.D.) Surendranagar. On behalf of the Society, it is further stated that the terms of the consent decree having not been honoured by the Purchaser and the dues of the Bank having increased to more than Rs. 2 crores, the land under Sale Agreement be allowed to be sold by public auction for obtaining its current market price, which according to the approved valuer's report is not less than Rs. 2,000/- per sq.mt.

#. The Collector, Surendranagar happened to be involved in the disposal of the land by the Society to the Purchaser under the following circumstances:

Certain members of the Society and public made a complaint to the State Government that there had been a collusive deal between the Society and the Purchaser and the land worth crores of rupees had been agreed to be

sold for a nominal price of Rs. 227.77 ps. per sq. mt. The Government of Gujarat, therefore, directed the Collector to make an inquiry and submit a report. The Collector after holding an inquiry, submitted a report in January 1991 in which it was conveyed to the Government that the Society should not be allowed to sell the land under the Agreement of Sale as looking to the nature of the transaction and the real value of the land, such sale would not be in the interest either of the Society or the Bank which has to recover its dues from the Society.

#. It appears that in the Notification issued on 21-12-1994 (Annexure A to the main Petition) sanctioning variation of the Development Plan concerning the lands in dispute from industrial zone to residential zone with a condition added permitting the disposal of the land only through the Official Liquidator, the State Government had in its mind the liquidation proceedings against the Society taken by the Bank and the report of the Collector that the Agreement of Sale was not a fair deal between the parties.

##. According to the petitioners, as also the petitioners in the connected Public Interest Litigation, the Purchaser has obtained the Sale Agreement at a nominal price and the Society was in collusion with him. The Notification dated 21-12-1994, which they persuaded the Government to issue for variation of the Development Plan to convert the land in question from industrial to residential zone, completely favoured the interest of the Purchaser, as the value of the land on conversion had increased manifold. What was causing hurdle in obtaining the sale deed under the Sale Agreement was the condition incorporated in the Notification of the Government dated 21-12-1994 that the disposal of the land shall be by the Official Liquidator through the Collector, Surendranagar by public auction.

##. In order to get the condition deleted, special efforts were made by the Society and the Purchaser in their mutual interest and the State Government was persuaded by them to issue the impugned Notification dated 20-7-2000, describing it as a Corrigendum to the Notification dated 21-12-1994. By the said impugned Notification of Corrigendum dated 20-7-2000, the condition incorporated in the Notification dated 21-12-1994 for disposal of land by the Official Liquidator through the Collector, Surendranagar by public auction was deleted. The result of the Notification of deletion of condition from the earlier Notification is that the Purchaser who purchased the property for a

nominal price and which was in industrial zone would be immensely benefited by increase of the value of the property after its conversion from industrial to residential zone. The contention of the petitioners in the Petition is that this is a clandestine design of the members of the Society, who were in collusion with the Purchaser to which the State Government appears to have fallen prey. The submission made is that the Notification of Corrigendum dated 20-7-2000 is clearly against the interest of the Society and its main creditor, the Bank, and thereby it is also against the public interest. Learned counsel Shri Yatin Oza appearing for the appellants in the Appeal and Shri R.R. Marshall appearing for the petitioners in the Public Interest Litigation separately addressed the Court urged that the Notification of Corrigendum be quashed to restore the condition imposed in the Notification dated 21-12-1994 of disposal of the land by the Official Liquidator through the Collector, Surendranagar by a public auction so that the highest competitive market price of the land be obtained after conversion of the land in the Development Plan from industrial zone to residential zone.

##. We have also heard Mrs. Manisha Lavkumar, learned A.G.P. for the State. In supporting the action of the State in issuing the Notification described as Corrigendum dated 20-7-2000 for deleting the condition of disposal of land by public auction after allowing conversion of land from industrial to residential zone, the submission made is that the insertion of such a condition of public auction for disposal of land in the initial Notification dated 21-12-1994 was outside the purview and powers of the State Government under the Town Planning Act. Learned AGP referred to the provisions of Section 12 to 19 of the Town Planning Act to substantiate her arguments that insertion of such a condition for conversion of land in the Development Plan from industrial zone to residential zone is de hors the provisions of the Town Planning Act. It is submitted on behalf of the State that by the impugned Notification described as Corrigendum, condition of disposal of land by public auction, which was inserted in the earlier Notification of 1994, was rightly decided to be deleted and such a course adopted by the State was completely in accordance with the provisions of the Town Planning Act.

##. Learned counsel Shri Shirish Joshi appeared for the Bank and addressed us for protecting the interests of the Bank. Apart from supporting the contention of the petitioners against the impugned Notification described

as Corrigendum whereby the condition of disposal of land by public auction was deleted, on behalf of the Bank, attention is invited to the provisions of Chapter X of the Gujarat Cooperative Societies Act, 1961. It is submitted that under the order dated 12-8-1992 of the Registrar, the Society has been wound up on grounds among others for its inability to pay the debt of the Bank. Official Liquidator has been appointed under Section 108 of the Cooperative Societies Act. On appointment of Liquidator, he assumes power under Section 110 of the said Act to sell the movable and immovable property of the Society by public auction or by any other mode which may be beneficial to the Society for paying dues of the creditors. As a result of the appointment of Liquidator under Section 108 of the Societies Act as provided in subsection (3) of the said Section, Liquidator has the right to take possession of all properties of the Society and the general body and managing committee of the Society cease to exercise any powers. The entire assets of the Society in accordance with subsection (5) of Section 108 vest in the Liquidator. It is also submitted that in Lavad Suit a consent decree has already been obtained by the Bank against the Society and the mode of execution of the decree is the same as provided in C.P.C. Under the C.P.C. for recovering the amount of decree by the Bank the mode prescribed is attachment and sale of the property of the Society by public auction. On behalf of the Bank, therefore, the learned counsel contended that the mode of public auction for disposal of the property cannot be exempted in favour of the Purchaser. He has only an Agreement of Sale in his favour, which is not enforceable after the Liquidator has been appointed in the course of winding up the Society. For non-fulfillment of the conditions of the consent decree the proceedings for execution of the decree are pending.

##. Learned Senior Counsel Shri Nirupam Nanavaty appearing for the Purchaser in his counter reply submitted that the order of winding up proceedings of the Society and appointment of Official Liquidator is a subject matter of Special Civil Application No. 5832 of 1997 pending for hearing before appropriate Single Bench and in case the Society which has filed the Petition succeeds in setting aside the orders of winding up and appointment of Liquidator, the whole proceedings pending against the Society would stand nullified.

##. Learned counsel also submits that the Purchaser under the Agreement of Sale has independent civil right to seek specific performance of the contract of sale and in this writ proceedings nothing can be said or should be

said so as to frustrate his contemplated civil action.

##. Having heard the learned counsel for the parties in both the matters, we would like to make it clear that we are purposely avoiding to express any opinion on the validity of the winding up proceedings and appointment of Liquidator against the Society which is the subject matter of a separate Petition, being Special Civil Application No. 5832 of 1997, pending in this Court for hearing before Single Bench. We would also refrain from expressing any opinion on the alleged existing civil rights of the Purchaser whereunder he claims right to seek specific performance of the contract of sale from the Society. Whether there would be any occasion for initiating any civil action and whether there would be any plea of limitation or other equitable considerations to grant such a decree of specific performance is not the subject matter of these proceedings.

##. We would, therefore, confine ourselves to the challenge made by the petitioners to the impugned Notification Exh. B dated 20-7-2000 which is described as Corrigendum to delete the condition of disposal of land by public auction as incorporated in the Notification dated 23-12-1994.

##. From the resume of the facts given by us in detail above, we have no manner of doubt that the State Government was persuaded by the concerned parties and the Authorities of the Society and the Bank and may be also by the Purchaser to issue a Notification in public interest sanctioning variation of Development Plan by converting the use of the land in question from industrial to residential purposes. The Notification issued on 21-12-1994 contained a condition for variation of the use of the land and its disposal only by auction to serve public interest in various ways. Initially the land was part of the properties of the Society. The Society was in heavy debts and had resolved to dispose part of its land which it did not require for its industrial or business purposes. The dues of the Bank with the passage of time were increasing by addition of interest payable on the principal sum borrowed. The Bank has to be paid its full dues. The land if utilized for residential purpose would have benefited general public. The benefit that would have derived by such conversion of the land for use in favour of the Purchaser was a wholly irrelevant consideration. It is, therefore, to be assumed that the State of Gujarat in issuing Notification dated 21-12-1994 was prompted solely by the public interest in incorporating condition of disposal of land

only by public auction. Such sanction for conversion of use of land from industrial to residential zone was to benefit the Society, its members, the Bank for recovery of its dues and the general public in getting amenities for residential accommodations. We, therefore, do not find that the State Government, in issuing the Notification dated 21-12-1994 with a condition incorporated therein of mode of disposal of land by public auction through the Official Liquidator under the supervision of the Collector, Surendranagar, indirectly intended to help the Purchaser to augment the value of the property under the Sale Agreement existing in his favour.

##. The Notification described as Corrigendum issued on 20-7-2000 to delete the condition of disposal of property by public auction from the earlier Notification is sought to be supported on behalf of the State contending that incorporating such a condition was beyond the purview of the Act. In the course of hearing it is pointed out that prior to the issuance of Notification dated 21-12-1994, a Notification was issued on 24-9-1994 under subsection (1) of Section 19 of the Town Planning Act proposing variation of the Development Plan in respect of the lands involved in this Letters Patent Appeal and the Special Civil Application. It is pointed out that in the said Notification of proposed variation of the Development Plan, the condition of disposal of the land by public auction was not included and against it no suggestions and objections were invited. The condition of mode of disposal of the land by public auction was incorporated only in the final Notification issued on 21-12-1994. Since incorporation of such a condition in the final Notification dated 21-12-1994 was not proposed in the Notification of proposal of variation of the Development Plan and as such condition was not in accordance with the Act, the State Government committed no error in issuing a Corrigendum on 20-7-2000 for deleting the said condition from the final Notification dated 21-12-1994.

##. The contention based on the relevant provisions of Town Planning Act authorising variation of A Development Plan with or without conditions would require examination of the scheme of the Act as reflected from its relevant provisions.

##. The procedure indicated in the Town Planning Act for preparation of a Development Plan is contained in Sections 9 to 19 of the Town Planning Act. After declaration of "Development Area" in accordance with Section 3 and constitution of "Area Development

Authority" in accordance with Section 5, one of the powers and functions under Section 7 of the Area Development Authority is to undertake preparation of a Development Plan. Section 9 requires preparation of a Development Plan by the Area Development Authority not later than three years from the declaration of Development Area and such Development Plan is to be submitted to the State Government for sanction. Section 12 contains the provisions showing the contents of the draft Development Plan which amongst others includes proposals for designation and use of the land for different purposes within the development area for a systematic town planning. In accordance with Section 13, draft Development Plan prepared by the Development Authority has to be published in the Official Gazette for inviting suggestions and objections which are required to be considered in accordance with Section 14. After receiving the suggestions and objections, if any modification of an extensive or substantial nature is intended to be made, such modification is again required to be published in the Official Gazette for inviting suggestions and objections. The draft Development Plan so prepared and modified is then required to be submitted to the State Government for sanction. It is then sanctioned in accordance with Section 17 as submitted by the Development Authority and in case the State Government proposes any substantial modification, it may again publish such proposals for modification in the Official Gazette for inviting suggestions and objections. In case of such modification or suggestions of the State Government the final Development Plan duly sanctioned shall be published in the Official Gazette. Section 19 which is relevant for the purposes of cases in hand permits variation in the final Development Plan by the State Government, but only if it is of the opinion that such variation is necessary in the public interest. Section 19 reads as under:-

"Sec. 19. Variation of final development plan.

(1) If on a proposal from an area development authority in that behalf or otherwise, the State Government is of opinion that it is necessary in the public interest to make any variation in the final development plan (hereinafter referred to as variation), it shall publish in the Official Gazette,

(a) the variation proposed in the final development plan,

(b) the amendments, if any, in the regulations, and

(c) the approximate cost, if any, involved in the

acquisition of land, which by virtue of the variation would be reserved for a public purpose. along with a notice, inviting suggestions or objections from any person with respect to the variation within a period of two months from the date of publication of the variation.

(2) After considering the suggestions or objections, if any, received under Section 19(1) within the period specified therein and after consulting the area development authority in a case where the variation is not proposed by that authority, the State Government may, by notification, sanction the variation with or without modifications, as it may consider fit to do and such variation shall come into force on such date as may be specified in the notification.

(3) From the date of coming into force of the variation, the provisions of this Act shall apply to such variation, as they apply to a final development plan.

(4) If any person who is affected by such variation has incurred any expenditure in complying with the final development plan as it existed before such variation, such person shall be entitled to received compensation,

(i) where the variation is made on the proposal of an area development authority, from that authority, and

(ii) in any other case, from the State Government,

if such expenditure is rendered abortive by reason of the variation of the plan."

##. In substance the procedure for variation is thus:

The proposed variation to the final development plan is required to be published in the Official Gazette for inviting suggestions and objections from all concerned, and after considering suggestions and objections, if any. received, and after consulting the area development authority, the State Government by a Notification may sanction the variation with or without modifications as it may consider fit. On such a modified final development plan when notified, as provided in sub-section (3) of Section 19, all other provisions of the Act apply to such varied or modified final development plan.

##. Learned counsel Shri Yatin Oza appearing for the appellant in the Letters Patent Appeal contended that may

be in the proposed Notification dated 24-9-1992 issued under sub-section (1) of Section 19 of the Town Planning Act for variation of the final development plan to the extent of converting the land from industrial zone to residential zone, there was no condition proposed to be incorporated for restricting disposal of land only by public auction, but such a condition could be incorporated in the final Notification for variation of the development plan issued on 21-12-1994. This is perfectly in accordance with subsection (2) of Section 19 of the Act which permit the State Government by notification to sanction the variation "with out without modification".

##. Learned counsel for the appellant then contends that the power of the State Government to impose such a condition restricting the disposal of the land by public auction can be culled from residuary clause (o) of Section 12, which illustrates the subjects which would be included in a draft development plan. Section 12(2)(o) reads as under:

"Sec. 12. Contents of draft development plan.
(1) xx xx xx xx
(2) xx xx xx xx
(a) to (n) xx xx xx
(o) such other proposals for public or other purposes as may from time to time be approved by the area development authority or as may be directed by the State Government in this behalf."

##. It is submitted that in accordance with clause (o) of subsection (2) of Section 12, the State Government for public purpose can direct insertion of a condition in the variation of development plan to restrict the mode of disposal of the land. Learned counsel also relied on the provisions of Section 21 of the General Clauses Act, 1897 in support of the submission that power to issue amendment or variation includes power to impose conditions if any.

##. On behalf of the State Mrs. Manisha Lavkumar, learned AGP reiterated her stand that the Notification of variation of final development plan could not include a condition restricting mode of disposal of land by public auction. Such a power of imposing condition in a development plan is totally absent in the provisions of the Town Planning Act. It is contended that the State Government in issuing the impugned Notification of Corrigendum dated 20-7-2000 did nothing more except to delete the condition which was de hors the provisions of

the Town Planning Act and an error or mistake committed by the Government.

##. Mr. Nirupam Nanavaty, learned counsel appearing for the purchaser, apart from supporting the stand taken by the State, supported the action of the State Government on the ground that since in the proposed Notification for variation of final development plan, no such condition was suggested to be incorporated and no objections/suggestions were invited from the public on the same, in the final Notification of variation of the development plan, inclusion of such condition was wholly unwarranted. Therefore, by subsequent Notification of Corrigendum that mistake could be corrected by the State by deleting the condition of putting restraint on the disposal of land by any mode other than public auction.

##. It is not in dispute that a final development plan had been prepared and duly published for the town of Surendranagar. By Section 19 of the Act, power has been conferred on the State Government to vary a final development plant, but only after it has formed an opinion on objective basis in that regard that such variation is necessary in the public interest. From the resume of facts given above, there is ample material on record to infer that by Notification of variation of development plan issued on 21-12-1994, the State Government had formed an opinion that the conversion of the land from industrial zone to residential zone would serve public interest as use of the land for residential purposes would benefit residential need of the town and at the same time increase the value of the land for the benefit of the Society to clear debts of the Bank. We cannot assume that in issuing the Notification of variation of the development plan by converting the land from industrial zone to residential zone, the State Government intended to indirectly benefit only the Purchaser, who had entered into an Agreement of Sale with the Society. In the final Notification of variation dated 21-12-1994, therefore, the State Government, after taking into consideration the public interest mentioned above, incorporated the condition of restricting the disposal of the land by public auction after sanctioning its conversion from industrial to residential zone.

##. Even if in the Notification for proposed variation such condition of prescribed mode of disposal of land was not there, yet, in the final Notification of variation, such a condition could be incorporated and that course is permissible under subsection (2) of Section 19 which uses the expression `after considering the suggestions and

objections and after consulting the Development Authority, the State Government, by Notification sanction the variation with or without modification'. The proposed variation in the development plan could thus be modified in the final development plant. Whether such a condition of restricting disposal of land is within the purview of the powers of the State Government under Town Planning Act is a question which we may not at present stage decide. In our opinion, if at any subsequent stage, the State Government had formed an opinion that such a condition restricting disposal of the land was liable to be deleted, and it was outside the provisions of the Town Planning Act, the same procedure of variation as indicated in relevant provisions of Section 19 were required to be followed.

##. If the final Notification which varied the development plan with condition of restricting mode of disposal contained therein was further proposed to be revised or varied, it was incumbent upon the State Government to form an opinion that it was necessary in the public interest to delete such a condition. It could have then deleted such condition only after inviting suggestions and objections from all concerned and after consulting the Development Authority in accordance with subsection (2) of Section 19. What is to be noted from various subsections of Section 19 is that exercise of power by the State Government depended upon two important prerequisites. Firstly, it has to form an opinion, not subjectively, but from the nature of the provisions, in our opinion, objectively. The second requirement is that such variation of development plan in the opinion of the State Government should be found necessary in `public interest'. `Public interest', thus, is the main foundation for the exercise of power of variation of development plan by the State Government. Before making such variation, public interest demands that general public has to be involved by inviting from them suggestions and objections. The Development Authority has to be consulted. It is only after such important exercise is completed to gather all necessary information and material for formation of the opinion that the final Notification of variation of development plan has to be issued. As has been stated by us, we assume that the first Notification of variation of development plan issued on 21-12-1994 containing a condition restricting mode of disposal of land was in public interest, namely, in the interest of Society and the Bank because, by variation, the land was to be made available to the residents and the Society was to get higher price of the land with the Bank assured of payments of its dues. The

private interest of the Purchaser under the Sale Agreement was irrelevant and could not have been matter of consideration when the State Government issued conditional Notification of variation of final development plan. If such a duly notified final development plan after variation was found to require a further variation by deleting the condition of restricting mode of disposal of the land, it was necessary for the State Government to again follow the whole procedure of variation for the second time in accordance with subsections (1) and (2) of Section 19.

##. The impugned Notification dated 20-7-2000 by which the condition laid down for disposal of land by public auction is deleted is styled as Corrigendum. The literal meaning of the word "corrigendum" is `something which requires correction'. It is generally used for correcting an error or mistake in a book, order or notification. A condition incorporated in the final variation of a development plan, if was sought to be deleted by the State Government, on formation of opinion that it was beyond the purview of the Act and its powers, could be done only by recourse again to the procedure indicated in Section 19 of the Town Planning Act. Such a condition contained in the Notification dated 21-12-1994 could not be said to be an error which could be corrected by issuance of a mere corrigendum. The State Government, as has been stated on affidavit on its behalf wanted to delete the condition of disposal of land being beyond the purview of the Act. It was, thus, not merely a mistake or error in the language of the Notification which could have been corrected only by a Notification of Corrigendum. In this respect, provisions of Section 15 of the Town Planning Act empowering the Development Authority to modify a draft development plan are relevant for understanding the meaning of `variation' and `corrigendum'. Section 15 reads as under:

"Sec.15. Modifications made after publication of draft development plan.

When the modifications made by an area development authority or, as the case may be, by the authorised officer in the draft development plan are of an extensive or of a substantial nature, the said authority or, as the case may be, the authorised officer shall publish the modifications in the Official Gazette along with a notice in the prescribed manner inviting suggestions or objections from any person with respect to the proposed modifications within a period of two months from the date of publication

of such notice and thereupon, the provisions of section 14 shall apply in relation to such suggestions or objections." (underlining for emphasis).

##. Taking help from the provisions of Section 15, what we have to consider is, whether the deletion of condition of restricting disposal of land contained in the original Notification of variation of development plan was a substantial part of that Notification? If it was so, deletion of that condition would amount to modification or variation of a substantial nature over the earlier duly notified varied final development plan. Such deletion and hence modification or variation of Development Plan could not be described merely as a `Corrigendum'. Such substantial change in the final notified development plan after its variation was published in the Official Gazette in accordance with Section 19. If it was required to be varied, again it was incumbent on the part of the State Government to follow the whole procedure contained in Section 19 of inviting fresh suggestions and objections from all concerned including the Bank, Society and general public. That procedure was necessary to be followed by virtue of the provisions of subsection (3) of Section 19, which states :

"19(3) From the date of coming into force of the variation, the provisions of this Act shall apply to such variation, as they apply to a final development plan."

##. The effect of subsection (3) of Section 19 was that final development plan as varied with condition incorporated therein of mode of disposal, was a final development plan and could be varied further only after following the entire procedure of inviting objections and suggestions including consultation with the Development Authority as provided under subsection (1) and (2) of Section 19. In our considered opinion, therefore, the impugned Notification dated 20-7-2000 contained variation of substantial nature in the Development Plan and it was not in accordance with Section 19 of the Act. By styling the Notification as a Corrigendum, the State clearly has made attempt to bypass the whole procedure of Section 19 of the Town Planning Act. The other question, whether such a condition prescribing mode of disposal of land is within or outside the purview of the Act and/or whether the source of power for it can be found in subsection (o) of subsection (2) of Section 12 of Town Planning Act need not be decided by us, at this stage. The State

Government is required to consider this legal aspect only after inviting suggestions and objections to proposed deletion of the condition contained in the varied final development plan. Had the State Government followed the required procedure under Section 19 of the Act before deleting the condition from the original Notification of variation of development plan, it would have been open to it to decide, after receiving suggestions and objections from all concerned whether the change of zone for the land from industrial to residential purposes would benefit only the Purchaser with whom the Society has entered into a Sale Agreement. It might not have then permitted any variation of final development plan. Both the aspects of retaining the original Notification of variation permitting change of zone and incorporation of the condition for disposal would have then been open for consideration before the State Government. Procedure laid down in Section 19 of inviting suggestions and objections from public and consulting the Development Authority was, therefore, required to be followed in public interest. As we have pointed out above, the initial Notification varying the development plan was to benefit the general pubic, the Society and the Bank. The Notification issued thus served public interest, but deletion of the condition of disposal of land by pubic auction is now going to benefit only the Purchaser. Similarly, in issuing the Notification for deleting the condition of disposal, public interest alone should have been the guiding factor. By not following due procedure of variation described in Section 19, the State Government has committed a serious error of procedure and law. It has thus overlooked the public interest in issuing the impugned Notification and deleting the condition of restricting mode of disposal of land.

##. As has been held by us above, the label or title given to the impugned Notification dated 20-7-2000 as Corrigendum is not decisive. It is a misnomer and misleading. By the impugned Notification, an important condition of disposal of land by Official Liquidator through Collector as contained in the main Notification dated 21-12-1994 was deleted. Corrigendum is a Latin plural word, meaning `something added as an errata to a printed book or document containing various errors and faults which are intended to be corrected in the main work or book'. (See the dictionary meaning). The learned Single Judge in his impugned order under Appeal has taken a view that the condition imposed in the initial Notification of conversion of land from one zone to another, by prescribing the mode of disposal of land by public auction was beyond the powers of the State

Governing of issuing the Notification under the Town Planning Act. According to the learned Single Judge this was a mistake which could be corrected by a Notification of Corrigendum. We have already held above that in issuing the first Notification, the condition restricting disposal of land by public auction was inserted in `public interest' to benefit the Society, the Bank and the general public. The deletion of a condition, in our opinion, is a `substantial modification or variation' of the initial Notification of change of zone of the land from industrial to residential. We have taken help of the provisions of Section 15 of the Town Planning Act where such modification of a substantial nature, at the instance of Area Development Authority in the development plan, can be made only after issuing public notice for inviting suggestions or objections. Whether the initial Notification containing the condition of disposal of land was within or outside the powers of the State and whether for that purpose the old Notification of change of zoning of the land could be partially or totally set aside was the question which could have been considered by the State Government only after following complete procedure indicated of variation of the final development plan in Section 19 of the Act. It requires as a precondition issuance of public notice inviting suggestions and objections. By virtue of subsection (3) of Section 19 at every stage of variation or modification of final development plan the rest of the provisions of Section 19, including inviting suggestions and objections are required to be mandatorily followed. The power under Section 19 of variation of a final development plan is to be exercised in public interest and for it the State Government is required first to form an opinion on objective basis. Public invitation for suggestions and objections has to be held to be a mandatory requirement of law, concerning Town Planning. There is a serious procedural irregularity in issuing the impugned Notification styled as Corrigendum and the said Notification, therefore, cannot be sustained.

##. Since in this matter, in our opinion, public interest is involved, we do not attach much importance to several objections of technical nature raised by the learned counsel on behalf of the Purchaser. Objection such as that the appellants in Letters Patent Appeal being members of the Society should have resorted to remedy of raising a dispute under the provisions of Cooperative Societies Act, is not a ground to reject the Appeal and thus disregard public interest. Similarly, the objections raised to the locus standi of the petitioner in the Public Interest Litigation such as that

they are not bonafide public interest litigants, and have filed the Petition to support the case of the appellants in the Letters Patent Appeal, that they have filed the same sensing the trend or the opinion of the learned Single Judge do not impress and persuade us to uphold the action merely on such technical objections. Since we find a serious procedural lacuna in the impugned Notification titled as Corrigendum on the above mentioned objections, we cannot deny relief to the appellants and the petitioners in these cases.

##. We have deliberately avoided to express any opinion on the effect of the winding up and liquidation proceedings against the Society on the basis of the provisions contained in Chapter X of the Cooperative Societies Act, as the same are the subject matters of a separate Special Civil Application No. 5832 of 1997 pending for hearing before the appropriate Single Bench. Similarly, we have avoided to express any opinion on the rights of the Purchaser in civil law. If there is an enforceable right and there is a cause of action for claiming specific performance of the contract of sale, the Purchaser is at liberty to work out his civil rights in appropriate civil court. It would be open to the Society to take necessary decision in that regard and also about the amount of earnest money or advance towards consideration paid by the Purchaser and in deposit with the Society.

##. We have already mentioned that the Purchaser as per the terms of the Agreement has paid earnest money @ Rs. 227.77ps for 9600 sq. mts. of land. On the orders of this Court in the Appeal, to show their bonafide, on the offered rate of Rs. 1000/- per sq. mt., 50% of the purchase price amounting to Rs. 1,28,32,500/- has been deposited by the appellants with the High Court. Since the appellants were losing interest on the said sum, they sought directions permitting withdrawal of the said amount. By order dated 1-5-2001 the court had allowed that prayer, but on the condition of furnishing a bank guarantee. Since, furnishing of bank guarantee requires pre deposit in the bank, learned counsel submits that his clients could not withdraw the said amount. As now we have taken a final decision in the Letters Patent Appeal and the Public Interest Litigation, we direct the Registry to return the amount of Rs. 1,28,32,500/- to the appellants by cheque or draft and obtain receipt.

##. In the result, the Letters Patent Appeal and the connected Special Civil Application are allowed. The impugned order of the learned Single Judge dated

11-12-2000 in in Special Civil Application No. 8286 of 2000 is hereby set aside. The impugned Notification titled Corrigendum dated 20-7-2000 is hereby quashed.

Rule issued in the Special Civil Application No. 12475 of 2000 is made absolute.

Under the circumstances, we direct the parties to bear their own costs.

(D.M. DHARMADHIKARI, C.J.)

(K.R. VYAS, J)

[sndevu]